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IN THE

Supreme Court of the United States

October Term, 1939.

No. 462.

GERMANTOWN TRUST COMPANY, Trustee of the Germantown Trust Company Bond Investment Fund,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Brief on Behalf of Petitioner Sur Writ of Certiorari Granted November 13, 1939.

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No. 462. October Term, 1939.

GERMANTOWN TRUST COMPANY, TRUSTEE OF THE GERMANTOWN TRUST COMPANY BOND INVESTMENT FUND,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BRIEF ON BEHALF OF PETITIONER SUR WRIT OF CERTIORARI GRANTED NOVEMBER 13, 1939.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals is printed in the Record at pp. 48 to 53, inclusive, and has been reported in 106 Federal Reporter (2d Series) 139.

The memorandum opinion of the Board of Tax Appeals is printed in the Record, pp. 16 to 17, inclusive. It is not reported in the official reports of the Board.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938, Title 28 U. S. C. A. Section 347.

The judgment of the Circuit Court of Appeals was entered on July 14, 1939 (R. 53).

On October 13, 1939, taxpayer filed with your Honorable Court a petition for writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit, which petition was granted by your Honorable Court on November 13, 1939.

STATEMENT OF QUESTIONS PRESENTED.

1. Whether the "Fiduciary Return of Income" on Treasury Form 1041 was "the return" specified in Section 275(a) of the Revenue Act of 1932 so that the assessment and collection of the proposed tax deficiency was barred two years after the filing of the return.

2. Whether a "Fiduciary Return of Income" on Treasury Form 1041 can be a "return" that decides the venue on the appeal under Section 1002 (a) of the Revenue Act of 1926 as amended, and not be the "return" that starts the running of the period of limitations under Section 275 (a) of the Revenue Act of 1932. Does the word "return" have a different meaning in these two Sections?

3. Whether venue to review the decision of the Board of Tax Appeals was in the Circuit Court of Appeals for the Third Circuit or in the Court of Appeals for the District of Columbia; that is, was the "Fiduciary Return of Income" on Treasury Form 1041 "the return of the tax in respect of which the liability arises" or "no return" under Section 1002 (a) of the Revenue Act of 1926 as amended.

STATUTES INVOLVED.

The power of the Commissioner to assess a deficiency in petitioner's 1932 federal income tax involves Sections 275 (a), 275 (c), and 276 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 237.

The question of venue to review the decision of the Board of Tax Appeals involves Section 1002 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 110, as amended by Section 519, Act of 1934, c. 277, 48 Stat. 760 (26 U. S. C. A. 641 b).

These statutes and other relevant statutes and regulations are set forth in the appendix hereto at pages 33-39.

STATEMENT OF THE CASE.

The petitioner is Germantown Trust Company, Trustee of the Germantown Trust Company Bond Investment Fund.

Germantown Trust Company is a trust company organized and existing under the laws of the State of Pennsylvania. It conducts a trust business involving the handling of all forms of trust estates and also acts as agent for various individuals and corporations in the custody, handling, and management of their investments. In order to afford persons for whom the Company held securities as agent or trustee the advantage of investing funds in diversified high grade bonds without delay and undue expense and under conditions which would permit of ready liquidation of the investments, the Company by agreement dated April 1, 1930 (R. 36), formed The Germantown Trust Company Bond Investment Fund (R. 29-30) and thereafter operated it according to the terms of the agreement (R. 31).

The facts in regard to the establishment and operation of this Fund were covered by stipulation before the Board of Tax Appeals (R. 29-43), and the Board adopted such facts as its Findings of Fact (R. 16).

The Company, as trustee, filed for the Fund "Fiduciary Returns of Income" on Treasury Form 1041 (furnished for

use by trustees) for the years 1930 and 1931. Respondent accepted these returns, and the Fund was taxed for these years as a trust, and not as a corporation.

On March 15, 1933, the Company, as trustee, filed for the Fund a "Fiduciary Return of Income" on Treasury Form 1041 for the calendar year 1932 with the Collector of Internal Revenue of the First District of Pennsylvania at Philadelphia (R. 35, 53 A-53 B). This return fully set forth the gross income, deductions and net income necessary to the calculation of the tax, if any, which might be due. Petitioner did not file a "Corporation Income Tax Return" on Treasury Form 1120 (R. 35). On September 17, 1936 Respondent prepared from the Form 1041 filed a so-called "Substitute Return" for Petitioner on Treasury Form 1120 for 1932 (R. 35, 53 C).

The individual participants in the Fund who were required to make federal individual income tax returns for 1932 included in their respective returns, filed on or before March 15 1933, their shares of the income disclosed on the schedule attached to the fiduciary return of income (R. 35, 36). The first notice Petitioner had of Respondent's change of position was the recommendation on or about July 8, 1936, of an internal revenue agent that the Fund be taxed as a corporation (R. 36). At that time it was too late for the individual beneficiaries of the fund to file claims for refund of the taxes they had paid.

Respondent on February 27, 1937, mailed a notice of a deficiency to Petitioner claiming that Petitioner was an association taxable as a corporation instead of a trust, for the year 1932 (R. 8, 36). This notice was mailed to Petitioner more than two years after the return on Form 1041 was filed by it, but less than four years after March 15,

1933, the last date on which any participant in the Fund filed his 1932 individual return for the purposes of this case (R. 35, 36).

On May 22, 1937, Petitioner filed a petition with the United States Board of Tax Appeals for a redetermination of this deficiency (R. 4-7), asserting (1) it was taxable as a trust and not as an association, and (2) the two year statute of limitations from the time the return was filed had run against the assessment and collection of the deficiency under Section 275 (a) of the Revenue Act of 1932 (R. 4, 5). On August 26, 1938, the Board of Tax Appeals, as set forth in its memorandum opinion entered August 24, 1938, ordered and decided (R. 18) that there was no deficiency because the statute of limitations in Section 275 (a) applied and the limitation had run (R. 17). As this disposed of the case, the Board did not discuss or decide the other issue (R. 16).

The Commissioner appealed to the Circuit Court of Appeals for the Third Circuit (R. 19-23) and to the Circuit Court of Appeals for the District of Columbia (R. 2, 3). The case first came before the Third Circuit Court of Appeals. It was argued April 13, 1939, before Honorable John Biggs, Jr., Honorable William Clark, Honorable Francis Biddle, Circuit Judges (R. 48), and on July 14, 1939, an opinion was filed by Honorable Francis Biddle, which decided (1) that a return had been filed under Section 1002 (a) of the Revenue Act of 1926, as amended (26 U. S. C. A. 641), and that therefore the Court had jurisdiction, but (2) reversing the Board's decision on the statute of limitations, held that "no return" had been filed under Section 275 (c) of the Revenue Act of 1932 and that therefore the four year limitation applied rather than the two year limi-

tation under Section 275 (a). The Court remanded the record to the Board, directing it to determine the Petitioner's appeal on the merits (R. 48-53).

On October 13, 1939, Petitioner filed with your Honorable Court a petition for writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit, which petition was granted by your Honorable Court on November 13, 1939.

SPECIFICATION OF ERRORS TO BE URGED.

1. The Circuit Court of Appeals erred in holding and deciding that the "Fiduciary Return of Income" on Treasury Form 1041 was not "the return" specified in Section 275 (a) of the Revenue Act of 1932 and therefore that the assessment and collection of the proposed tax deficiency was not barred by the two year period of limitation therein.

2. The Circuit Court of Appeals erred in holding and deciding that the "Fiduciary Return of Income" on Treasury Form 1041 was "no return of the tax imposed by this title" and therefore that Section 275 (c) of the Revenue Act of 1932 applied.

3. The Circuit Court of Appeals erred in not holding and deciding that the word "return" and the phrase "return of the tax" in the limitation sections of the Revenue Act (Sections 275 (a) and 275 (c) of the Revenue Act of 1932) do not carry the same meaning as the phrase "return of the tax" in the venue section of the Act (Revenue Act of 1934, Section 519, amending Section 1002 (a) of the Revenue Act of 1926).

4. The Circuit Court of Appeals erred in holding and deciding that the "Fiduciary Return of Income" on Treasury Form 1041 was the "return of the tax" that gave the

Circuit Court of Appeals venue on the appeal under Section 1002 (a) of the Revenue Act of 1926 as amended, but was not a "return" that starts the running of the period of limitations specified in Section 275 (a) of the Revenue Act of 1932.

5. The Circuit Court of Appeals erred in reversing the decision of the Board of Tax Appeals.

6. The Circuit Court of Appeals erred in entering the following judgment:

> "the order or decree of the said Board of Tax Appeals in this cause be and the same is hereby reversed, and the cause remanded to the said Board of Tax Appeals with direction to determine the taxpayer's appeal on the merits."

SUMMARY OF ARGUMENT.

1. The "Fiduciary Return of Income" filed by Petitioner in good faith on Treasury Form 1041 and containing all the information necessary for the calculation of any tax that might be due was a "return" within the meaning of Section 275 (a) of the Revenue Act of 1932, fixing a two year period of limitation, and the assessment of the proposed deficiency is therefore barred.

2. The four year limitation provided in Section 275 (c) of the Act does not apply where, as in this case, a return is filed in good faith containing all essential information.

3. Section 275 (c) applies only where the taxpayer files no return within the meaning of Section 276 (a).

4. The filing in good faith of the Fiduciary Return on Form 1041 disclosing all necessary information takes this case out of the "no return" classification of Section 276 (a).

5. The Fiduciary Return contained all the information which would have been included by Petitioner in a corporation return on Form 1120.. Respondent used this return as the basis for the proposed assessment of the tax, and cannot now claim that it was not a "return of the tax."

6. If this assessment is allowed, the individual participants in this Fund who paid their income taxes on their gross distributive shares of the Fund's income will be doubly taxed, as it was too late for them to file claims for refund when Petitioner in July, 1936, first knew that Respondent might tax it as a corporation.

7. The word "return" has the same meaning in the limitation sections of the Revenue Act as it has in the venue section. If the fiduciary return is the "return" that gave the Circuit Court of Appeals jurisdiction of the appeal from the Board of Tax Appeals under Section 1002 (a) of the Revenue Act of 1926 as amended, it is the "return" that starts the running of the period of limitations under Section 275 (a). The Circuit Court of Appeals for the Second Circuit was correct in so holding in a similar case, and the lower Court erred in holding otherwise in this case.

8. The lower Court in this case correctly held that it had jurisdiction.

ARGUMENT.

I. The Assessment of the Proposed Deficiency Is Barred by the Statute of Limitations.

Petitioner, Germantown Trust Company, as Trustee of the Germantown Trust Company Bond Investment Fund filed in good faith a fiduciary return on Form 1041 for the year 1932 on March 15, 1933 (R. 35). Respondent used that return as the basis of his audit and as a basis for his ninety-day letter (R. 10). In such return Petitioner entered its gross income and deductions disclosing fully all items thereof and computing its net income. From this return Respondent prepared a return on Form 1120 which he designated a "substitute return" and noted that "orig. filed on 1041." (See Exhibit D of the Stipulation of Facts and page 1 of Exhibit E of said Stipulation of Facts (R. 53 A-C)). The statutory notice of deficiency was not issued until February 27, 1937 (R. 8, 36). The two-year limitation period provided in Section 275 (a) of the Revenue Act of 1932 expired on March 15, 1935. Petitioner therefore contends that Respondent is barred from assessing and collecting this tax.

Section 275 of the Revenue Act of 1932 (c. 209, 47 Stat. 237) provides:

> "SECTION 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.
>
> "Except as provided in section 276—
>
> (a) General rule.—The amount of income taxes imposed by this title shall be assessed within two years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.
>
> . . . . . .

(c) Corporation and shareholder.—If a corporation makes no return of the tax imposed by this title, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed."

Section 276 of the Act provides:

"SECTION 276. SAME—EXCEPTIONS.

"(a) False return or no return.—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time."

A. The Fiduciary Return Was a Return Within the Meaning of Section 275 (a).

Petitioner contends that the fiduciary return filed by it in good faith on Form 1041 was a "return" within the meaning of Section 275 (a) fixing a two year period of limitation. The Board of Tax Appeals concurred in this view (R. 16-17).

Respondent contends that the fiduciary return was "no return of the tax" and that the case therefore falls within Section 275 (c). The Circuit Court of Appeals for the Third Circuit concurred in this view (R. 50-52).

The Circuit Court of Appeals first reached the conclusion that the fiduciary return filed by Petitioner was a "return of the tax" under the venue section of the Revenue Act (Section 1002 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 110, as amended by the Act of 1934, c. 277, 48 Stat. 760 (26 U. S. C. A. 641 b) and that therefore it had jurisdiction to review the decision of the Board of Tax Appeals (R. 49)). It then concluded that there was "no return of

the tax" under the limitation sections of the Act. In so doing it explicitly took issue with the decision of the Circuit Court of Appeals for the Second Circuit to the effect that the "return of the tax" must carry the same meaning in the limitation sections as in the venue section of the Act. (*Commissioner v. Roosevelt & Son Investment Fund,* 89 Fed. (2d) 706). We shall discuss this question later in our brief (p. 26).

The Circuit Court of Appeals was led to the conclusion that the fiduciary return filed by Petitioner was no return of the tax under the limitation sections of the Act, by two misconceptions: (1) that the legislative history of Section 275 (c) shows that the purpose of the Congress in enacting Section 275 (c) was to give the Commissioner a longer period in which to file assessments in the cases therein provided for than in cases covered by Section 275 (a), and (2) that the only conceivable purpose of Section 275 (c) was to care for the exact situation here presented.

We submit that both of the premises, which led the Court to its conclusion in regard to the period of limitation, are unsound.

B. Section 275 (c) Is Applicable Only Where the Case Would Fall in the "No Return" Classification Covered by Section 276 (a) Were It Not for the Fact That the Participants Have Included Their Shares of the Income in Their Individual Returns.

(1) The Legislative History of Section 275 (c).

Provisions similar to those incorporated in Section 275 (c) of the 1932 Act were first included in the Revenue Act of 1926 and there appeared as Section 277 (a) (5) c. 27, 44 Stat. 58.

Prior to that time if individuals engaging in a joint venture, either in the form of a trust or otherwise, believing the income thereof was taxable to them as individuals, included their respective shares of the income in their individual returns but filed no corporation, partnership, or fiduciary return, and it was thereafter determined that they were taxable as a corporation, there was no limitation period within which the tax must be assessed. It was a "no return" case in which the tax might be assessed at any time under Section 278 (a) of the Revenue Act of 1924, c. 234, 43 Stat. 299 (which corresponds with Section 276 (a) of the Act of 1932).

To provide a limitation in such cases Section 277 (a) (4) was introduced in the Revenue Bill of 1926. This section provided for a four year period of limitation commencing at the last date on which any of the individual shareholders filed his return. This section became Section 277 (a) (5) in the Revenue Act of 1926 and Section 275 (c) of the 1932 Act.

With respect to this Section (277 (a) (4) in the Bill) the House Ways and Means Committee in House Report No. 1, 69th Congress, first session, page 11, states as follows:

> "This section provides that if a corporation makes no return of the tax imposed by this bill, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. This provision is limited to taxes imposed under this bill, and it is incorporated in the bill to make certain that if in the future the beneficiaries of a trust or the members of an association include their distributive share in their income-tax return, and

if at a later date it should be held that the trust or association is subject to the corporation tax and should have made the return, the statute of limitations as applied to the trust or association shall run from the dates above specified."

The Report of the Senate Committee on Finance with respect to the Revenue bill of 1926 contained an identical statement. Senate Report No. 52, 69th Congress, first session, page 28. The language indicates that the only purpose of this Section was to provide that if the trust or association did not make the return, but if the shareholders or beneficiaries did include the income in their returns, the statute of limitations as applied to the trust or association should run from the last date on which any shareholder's return was filed. Omitting the qualifying words the purpose is clearly expressed in the following:

". . . it is incorporated in the bill to make certain that . . . the statute of limitations as applied to the trust or association shall run from the dates above specified."

Respondent argued in the Circuit Court of Appeals that the language above quoted from the reports of the Ways and Means Committee of the House of Representatives and of the Senate Finance Committee showed that the intention of the Congress in inserting Section 277 (a) (4) in the Revenue Bill of 1926 was to give Respondent a longer period for assessing the tax against the trust or association than that applicable to taxpayers generally.

The Circuit Court of Appeals adopted this line of reasoning. After quoting the above portion of the report the Court states

"It was natural that the Commissioner should be given a longer period for assesment,"

(i. e. longer than the three year period provided in the usual case by Section 277 (a) (1) of the 1926 Act as finally enacted).

This consideration might have some weight if, and only if, at the time the reports were made the limitation period in the usual case had been less than four years. But such was not the case.

An examination of the Revenue bill of 1926 as introduced in the House of Representatives by the Ways and Means Committee shows that the regular statute of limitations for assessments as therein provided in Section 277 (a) (1) was four years after the return was filed. (*Paul & Mertens, Law of Federal Income Taxation,* Vol. 5, p. 532-3; *Seidman, Legislative History of Federal Income Tax Laws,* p. 627.) The Senate Finance Committee made certain amendments to this bill but left the four-year period of limitation contained in Section 277 (a) (1) unchanged.

Nothing therefore in the Committee reports can properly be construed as showing an intention to give the Commissioner a longer period to assess the tax in a case covered by Section 277 (a) (4) of the bill than in the usual case covered by Section 277 (a) (1) because at the times the Committee reports were submitted the limitation in both cases was four years. It was the evident intent of both Committees that in the usual case where a return was filed by an individual, corporation, trust or association, the statute of limitations would start to run from the filing of such return. But in cases where a trust, association, partnership or joint venture filed no return, the regular statutory period of limitations should start to run from the date on which the last shareholder's return was filed. This Section, 277 (a) (4), (Section 275 (c) of the 1932 Act) was to take the case out of the ordinary no-return category. It was not intended to

broaden Section 277 (a) (1), (Section 275 (a) of the 1932 Act) but was intended to limit and restrict Section 278 (a) (Section 276 (a) of the 1932 Act).

At some time during the consideration of the 1926 Revenue Act, the general statutory period of limitations contained in Section 277 (a) (1) was changed from four years to three years. It does not appear when this change was made but apparently it was made from the floor of the Senate and the conference reports on the Revenue bill of 1926 indicate that the House of Representatives yielded to the Senate on this change. (*Seidman, Legislative History of Federal Income Tax Laws*, p. 627). It is true that the period of limitations in Section 277 (a) (4) was left at four years but this does not change the fact that the original intent of the Congress was that this Section was to be a limitation or a restriction on the no-return section.

This intention of the Congress was shown again when the Subcommittee of the House Ways and Means Committee recommended that Section 275 (c) of the Revenue Act of 1932 should be eliminated from the Revenue Act of 1934. Their report, 73rd Congress, second session, House Report, December 4, 1933, p. 21, stated:

> "Subsection (c) of this section provides that if a corporation fails to file a return but each shareholder includes in his return his distributive share of the net income of the corporation, then the corporate tax may be assessed within 4 years after the last date on which the shareholder's return was filed. Under the general rule, if a corporation fails to file a return, the corporate tax may be assessed at any time. Your subcommittee sees no reason for making an exception to the general rule merely because some of the shareholders have included corporate income in their returns. It is accordingly recommended that subsection (c) be eliminated."

The Treasury Department objected to the Subcommittee's proposal. Mr. Roswell Magill stated the recommendation of the Treasury Department at the Hearings before the Committee on Ways and Means of the House of Representatives, 73rd Congress, first session, p. 146, as follows:

> "(26) Statute of limitations—assessments—(second recommendation).—The Treasury believes that Section 275 (c) should not be eliminated. It serves a useful purpose, in that it contains a period of limitation upon the assessment of corporate taxes, and it accords with the general policy that a definite point of repose for all tax cases is desirable."

We therefore submit that the legislative history of Section 275 (c) shows that its purpose was not, as the Circuit Court of Appeals assumed, to give the Commissioner a longer period for assessment than in the usual case provided for in Section 275 (a). The purpose clearly is shown to have been to provide a period of limitation where the members of a group, believing themselves to be a partnership or joint venture have in good faith included its income in their individual returns but have filed no partnership, fiduciary or corporation return.

(2). Section 275 (c) Is Not Applicable to Cases Where a Return Giving the Essential Information Is Filed in Good Faith.

The Circuit Court of Appeals held that the only conceivable purpose of Section 275 (c) was to care for the exact situation here presented. The Court said:

> "It is difficult to conceive, therefore, how Section (c) could apply except where a fiduciary return is made, as in this case, by the entity, imagining itself to be a fiduciary, but perhaps later determined to be a corpora-

tion. The section must be meant to apply to a case where this entity fails to make a corporation return but makes only a fiduciary return." (R. 51.)

We respectfully submit that the Court here fell into error (a) by ignoring the words of the Section showing plainly that it applies only where "no return of the tax" has been filed and (b) in assuming that the only entities or groups to which it could apply are corporations and trusts with large numbers of stockholders or beneficiaries.

The Court holds that:

> "This section of course does not apply where a corporation makes no return and its shareholders include its dividends in their return. It looks to a case only where the corporation makes no return and each of its shareholders includes 'his distributive share of the net income.' Shareholders do not ordinarily include 'distributive shares'; ordinarily they return dividends. When, however, they believe that the entity is not a corporation but a fiduciary, liable only to file a fiduciary return, there are no dividends, and they return their distributive shares, as shown by the fiduciary return. It is hard to imagine their returning such distributive shares without the fiduciary return, from which they obtain the necessary information." (R. 50-51.)

If as the Court assumes, Section 275 (c) applies only to cases where a fiduciary return is filed as in this case, the question immediately arises why the Congress did not plainly say so? And, furthermore, if the section is to apply only in cases where fiduciary returns are filed, why should not the limitation period commence at the date of filing the fiduciary return instead of at the last date on which any shareholder's return is filed?

Or why is it hard to imagine beneficiaries returning their distributive shares without a fiduciary return from which they obtain the necessary information? There are many trusts for family or other closely associated groups where such information is known to all the beneficiaries without any fiduciary or partnership return being prepared.

Or again, why should the Court assume that Section 275 (c) applies only to trusts? Surely it applies to joint ventures, partnerships and associations of all kinds which the Commissioner ultimately may determine to be taxable as corporations but for which no return has been filed for the group because the individuals composing it believed in good faith that the income was taxable to them as individuals.

It is submitted therefore that there is every reason to construe Section 275 (c) to apply, as its language plainly indicates, only to those cases where no return is filed by or on behalf of the entity ultimately found to be taxable as a corporation.

A consideration of the application of Section 275 (c) to other facts and circumstances makes the foregoing conclusion inescapable. Suppose in the present case one or more of the shareholders had not included his distributive share of the net income in his return. Then obviously the conditions of Section 275 (c) would not be met and the period of limitation provided in that Section would not be applicable. In such a case would Respondent contend that the case came within the provisions of Section 276 (a) giving him an unlimited time for making the assessment or would he contend that Section 275 (a) providing for a two-year period of limitation would be applicable? If it is contended that under such circumstances the two-year period limitation is applicable then a shareholder can, by failing

to do what he is supposed to do, shorten the statutory period of limitation as compared with the case where every shareholder includes in his return his distributive share of the income. It is indeed strange justice which would permit such a conclusion. On the other hand, if the failure by a shareholder to include his distributive share of the net income in his return brings the case within Section 276 (a) then we have the precise conclusion for which Petitioner contends, namely, that Respondent must first establish that the case is a no-return case within Section 276 (a) before Section 275 (c) can be applicable. It is then clear that the purpose of Section 275 (c) was to fix a point of beginning for the running of the statute of limitations in a case where otherwise under Section 276 (a) there would be no bar to the assessment and collection of a tax at any time.

C. The Filing of a Fiduciary Return on Form 1041 Takes This Case Out of the No-Return Classification.

We are then brought to the question whether the present case would be a no-return case within Section 276 (a), were it not for the fact that each of the beneficiaries required to make an income tax return did include in his return his distributive share of the net income (R. 35).

Complete accuracy is not necessary to rescue a return from nullity.

In *Zellerbach Paper Company v. Helvering*, 293 U. S. 172, 180, the Court speaking through Mr. Justice Cardozo stated:

> "Perfect accuracy or completeness is not necessary to rescue a return from nullity, if it purports to be a return, is sworn to as such . . . and evinces an honest and genuine endeavor to satisfy the law. This is so though at the time of filing the omissions or inaccuracies are such as to make amendment necessary."

The filing of a return in good faith disclosing all items of gross income and deductions and computing a net income starts the running of the statute of limitations. An error in selecting the correct blank upon which to disclose such information does not deprive a taxpayer of the benefits of the statute of limitations.

The principle applicable to such situations was first enunciated by the Board of Tax Appeals in the early case of *Mabel Elevator Company*, 2 B. T. A. 517. In that case the Board held that a return, purported to be made in accordance with law, prepared on the fiscal year basis while it should have been made on a calendar year basis, started the running of the statutory period of limitations.

This case was followed by *Abraham Werbelovsky, Executor*, 8 B. T. A. 442, 446. There the Board held that the filing of a return by the executor on Form 1041 instead of on Form 1040 or Form 1040A started the running of the statute of limitations. In that case the Board observed:

> "Does the fact that the executor . . . in filing 'a return of the income' used Form 1041 instead of either Form 1040 or 1040A place the estate in the position of having failed to file a return within the meaning of the words 'or of a failure to file a return' as used in Section 278 (a) of the Revenue Act of 1924? We think not. The estate did file 'a return.'"

This decision was followed by the Board in *Estate of F. M. Stearns*, 16 B. T. A. 889, and *J. R. Brewer, Administrator*, 17 B. T. A. 704.

The Third Circuit Court of Appeals in the case of *Commissioner v. Stetson & Ellison Company*, 43 Fed. (2d) 553, came to the conclusion that a consolidated income tax return filed in good faith and substantially complying with the statute started the running of the statute of limitations

for assessment of additional taxes against all of the consolidated companies even though one of them was not in fact a part of the consolidation. The court found that the returns were filed in good faith and in substantial compliance with the requirement of the statute.

The return here in controversy was likewise filed in good faith and in substantial compliance with the statute. It disclosed all the necessary facts for the assessment of a tax and put Respondent on notice with respect to the position taken by Petitioner on the question of its liability for income taxes.

In the case of *United States v. Tillinghast*, 69 Fed. (2d) 718, the Circuit Court of Appeals for the First Circuit came to the conclusion that where an income tax return showed no profits the failure to file a supplementary return under the excess profits tax was not a failure to file a required return within the statute. In that case some of the previous cases are referred to and the opinion makes clear the distinction that should be made between cases where there is no return at all or where it is so incomplete that a tax cannot be assessed and cases where returns are made in good faith disclosing all of the necessary information.

The precise question here in issue was before the Board of Tax Appeals in *Roosevelt & Son Investment Fund*, 34 B. T. A. 38. In a careful opinion in which the Board reviewed its previous decisions it was held that the period of limitations prescribed in Section 275 (a) is applicable where a return on Form 1041 is filed and that Section 275 (c) is not applicable.

When the Board of Tax Appeals had the instant case before it, it followed its opinion in the Roosevelt case, supra, notwithstanding the fact that the Circuit Court of Appeals for the Second Circuit had dismissed for lack of jurisdic-

tion, the Commissioner's petition for review of the Roosevelt decision. Subsequently in the case of *Lee H. Marshall Heirs v. Commissioner*, 39 B. T. A. 101, the Board came to a different conclusion, namely, that Section 275 (c) of the Revenue Act of 1932 was applicable. The Board, however, reached that conclusion because of the dictum contained in the opinion of the Circuit Court of Appeals for the Second Circuit in the case of *Commissioner v. Roosevelt & Son Investment Fund*, 89 F. (2d) 706. That dictum was based upon the construction which the Circuit Court of Appeals for the Second Circuit put upon the phrase "the return of the tax" as used in Section 519 of the Revenue Act of 1934 amending Section 1002 (a) of the Revenue Act of 1926. With this construction, the Circuit Court of Appeals for the Third Circuit, Petitioner, and Respondent all disagree.

Even if it should ultimately be held that Petitioner was taxable as an association, it is doubtful whether it was required to file a return on Form 1120.

Section 142 of the 1932 Revenue Act (c. 209, 47 Stat. 214) provides:

> "Requirement of return.—Every fiduciary . . . shall make under oath a return . . . for any of the following individuals, estates; or trusts for which he acts . . ."

Petitioner in this case is a fiduciary. Respondent so admits (R. 4, 12). Under the provisions of Section 142 of the Revenue Act of 1932 and the Regulations of Respondent thereunder (Regulations 77, Article 741), it was required to make a return on Form 1041. Was it also required to make a return on Form 1120?

Section 52 of the Revenue Act of 1932 (c. 209, 47 Stat. 188) relates to the requirement of returns on the part of corporations. The material part thereof reads as follows:

"(a) Requirement—Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title . . .."

The statute does not prescribe the form of return to be used. Petitioner in filing a return on Form 1041 complied with this provision. It is true that the Regulations of Respondent require a return on Form 1120 "in the case of ordinary corporations" (Regulation 77, Article 391). But Petitioner is certainly not an "ordinary corporation," Respondent merely asserts it was "operating as a corporation" (R. 10). Section 1111 (a) (2) of the 1932 Act (c. 209, 47 Stat. 289) states that the term "corporation" includes "associations, joint stock companies and insurance companies." but nowhere is the term "ordinary corporation" defined. Even under Respondent's own construction of the term "ordinary corporation" it does not include all of the entities covered by the statutory definition of corporation, because in Article 391 of Regulations 77, which prescribes the form of return for the ordinary corporation, insurance companies are excluded, whereas they are included in the statutory definition of a corporation.

Petitioner acted in perfect good faith and had ample reason to take the position that a filing of a return on Form 1041 was a full compliance with the law. It had no knowledge that it might be held taxable as a corporation until July, 1936 (R. 36), whereas the trust began on April 1, 1930 (R. 30). Certainly it cannot be contended that Petitioner to protect itself and to have the regular statutory period of limitations of Section 275 (a) apply should have filed both a return on Form 1041 and a corporation return on Form 1120.

When Petitioner in July, 1936. first knew that it might be taxable as a corporation, it was too late for the individual participants in the Fund, who had included their shares of the income in their individual federal income tax returns for 1932 (R. 35, 36), to file claims for refund. Section 322 (b) (1) of the Revenue Act of 1932 (c. 209, 47 Stat. 242) provides:

> "Period of limitation.—No such credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer."

Under Sections 11 and 12 of the Revenue Act of 1932, c. 209, 47 Stat. 174, the participants paid normal tax and surtax on their gross distributive shares without any deduction of corporation income tax. If this Fund was a corporation, these distributions not only would be decreased by the amount of the corporate income tax but would be taxed as dividends and under Sections 11 and 25 (a) of the Revenue Act of 1932 (c. 209, 47 Stat. 174, 184) would not be subject to the normal tax but only to the surtax. It would be inequitable to allow the Commissioner four years to assess a deficiency against the Fund, which should entitle the participants to refunds of their individual taxes, and then point out to them that the time for filing claims for such refunds was two years from the time the tax was paid. The Act should not be construed so as to permit this result unless no other reasonable construction is possible.

The Stipulation of Facts clearly shows that Petitioner filed a "return" (Pars. 13, 14—R. 35). The so-called substitute return prepared by Respondent on Form 1120, bears the notice that it is a "substitute return" (R. 53C). The following legend appears thereon: "Orig. filed on 1041." The substitute return discloses no more information than

the return prepared and filed by Petitioner, with the exception of the amount of the tax, computed as though it were a corporation. The gross income on that return is precisely the same as that on the fiduciary return filed. The deductions are the same with the exception of the minor adjustments set forth in Respondent's ninety day notice (R. 10). In fact this statutory notice which initiated this proceeding is based solely upon Petitioner's return on Form 1041. No reference is made in this letter to the so-called substitute return on Form 1120 or the fact that Respondent had prepared such a return (R. 10). Can it be seriously argued that a return which Respondent has used as the basis of a proposed assessment of tax is not a "return of the tax"?

The only point of difference between the corporation return and the fiduciary return is the computation of the amount of corporation income tax. This difference cannot be determinative. Unquestionably, a large number of returns are filed annually on which no tax is computed and on which it is subsequently determined that a tax is due. Does Respondent take the position that in each of those cases there was not a "return of the tax"? Petitioner took the position that it need compute no tax because it owed no tax. It was and is the contention of Petitioner that it is taxable as a trust and not as a corporation. If it had filed a return on Form 1120, it would have disclosed precisely the same information it disclosed on the fiduciary return and would not have computed the corporation tax. This is the accepted practice of raising the issue of the taxability of the entity involved. If a tax is computed on the return, Respondent treats it as a self-assessment and the Collector may and does proceed to enforce the collection of the tax. In such cases the taxpayer is deprived of the right given by

statute to have its tax liability determined by the Board of Tax Appeals. This is precisely what happened in the case of *John A. Gebelein, Inc. v. Commissioner,* 37 B. T. A. 605, in which case the taxpayer computed a tax but claimed it was not subject to the tax. Certainly it was never the intention of Congress, nor should the law be construed to deprive a taxpayer of the right to petition the Board of Tax Appeals for redress.

If Petitioner had filed Form 1120 without computing the tax, clearly the two year limitation provided in Section 275 (a) would have applied. Surely the same result should follow if exactly the same information is included in Form 1041. The tax laws should not be treated as a game where the rights of the taxpayer depend on which card he draws. Substance, not mere form, should be the controlling factor.

Petitioner therefore submits that the fiduciary return filed by it in good faith was a "return" within the meaning of Section 275 (a) of the Revenue Act of 1932 and that the two year period of limitation therein provided bars the collection of the tax.

II. The Word "Return" Has the Same Meaning in Sections 275 (a) and 275 (c) of the Act Providing Limitations on Assessments as It Has in Section 1002 (a) as Amended Governing Venue on Appeals From the Board of Tax Appeals.

Section 519 of the Revenue Act of 1934, c. 277, 48 Stat. 760, provides:

> "SEC. 519. VENUE FOR APPEALS FROM BOARD OF TAX APPEALS.
>
> "(a) Section 1002 of the Revenue Act of 1926 is amended to read as follows:

"'SEC. 1002. (a) Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia."

The Circuit Court of Appeals for the Third Circuit in this case held that the words "return" and "return of the tax" did not have the same meaning in Section 1002 (a) as they did in Section 275 (a) and 275 (c). It concluded that there was a "return of the tax" within the meaning of Section 1002 (a).

This conflicts with the decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner v. Roosevelt and Son Investment Fund*, 89 Fed. (2d) 706, involving practically identical facts, in which it was held that the words "return of the tax" have the same meaning in both sections.

In that case the Court stated:

"Thus the representation is made of jurisdiction by reason of the return filed by respondent on Form 1041. But if these representations be correct, the alleged deficiency is clearly barred by the limitation provisions of Section 275a. If the petitioner (Commissioner) concedes that a proper return was filed Section 275c of the statute becomes inapplicable for that section by its terms applies only where no return is made . . .. It cannot be that there was a return for one purpose" (jurisdiction) "but not for another" (statute of limitations).

The Third Circuit Court in this case adopted the opposite view. They said:

"We are of course familiar with the decision of the Circuit Court of Appeals for the Second Circuit in Commissioner v. Roosevelt & Son Inv. Fund, 89 F (2d) 706, that it did not have jurisdiction, not passing on the other question, and dismissing the appeal. Similar facts were presented. The court thought that 'return of the tax' must carry the same meaning in the venue section as in the limitation sections. But courts have not felt it necessary to invoke such rigid consistency where different meanings were evidently intended for the same words. See Helvering v. British American Tobacco Co., 69 F. (2d) 528, 530 (CCA 2d), affirmed 293 U. S. 95; Helvering v. Stockholms Enskilda Bank, 293 U. S. 84, 86-88. The context of words may affect their meanings. The kind of return required by classification for jurisdiction need not be the same as the return which will start a period of limitation." (R. 52)

Petitioner agrees with the reasoning of the Second Circuit Court. We fail to find anything in the Revenue Acts which indicates that the word "return" does not have the same meaning in Section 275 as in Section 1002 (a).

In *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 87, Mr. Justice Sutherland, speaking for this Court, said:

"'there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.' Atlantic Cleaners & Dyers v. United States, 286 U. S. 427, 433, 76 L. ed. 1204, 1207, 52 S. Ct. 607."

See also *Pampanga Sugar Mills v. Trinidad*, 279 U. S. 211, 218; *Butterworth et al. v. Commissioner*, 63 Fed. (2d) 944, 948 (C. C. A. 3rd), affirmed 290 U. S. 365.

It is true, of course, that this presumption may be rebutted, but Petitioner submits the Third Circuit Court has

not shown in its opinion any adequate reason showing that a different meaning was intended by the Congress for the words "return of the tax" used in Section 275 (c) than the Congress intended when using these words in Section 1002 (a) as amended.

While we agree with the Second Circuit Court that the words "return" and "return of the tax" have the same meaning in Section 275 as they have in Section 1002 (a) as amended, we disagree with that Court in holding that a fiduciary return is not a return under Section 1002 (a). In this we are in accord with Respondent and with the Third Circuit Court.

This brings us to the question of the jurisdiction of the lower Court.

III: Venue of Appeals From the Board of Tax Appeals.

The Circuit Court of Appeals held that the fiduciary return filed by Petitioner in the Collector's Office in Philadelphia was "the return of the tax in respect of which the liability arises" within the meaning of Section 1002 (a), supra, page 27, and that therefore it had jurisdiction.

The Court stated:

> "We can find no basis for distinguishing between a fiduciary return and a corporation income tax return, so far as jurisdiction is concerned. Both are tax returns, though one may be accompanied by payment, and both involve a definite act on which jurisdiction may be hung. Both are returns 'of the tax in respect of which (fol. 51) the liability arises.' If the Fund is taxable the tax is based on the information shown in the Fiduciary Return. It is spoken of as a 'return' by Sec. 142 of the

> Act: 'Requirement of return.—Every fiduciary . . . shall make under oath a return . . . for any of the following individuals, estates, or trusts for which he acts . . . .' The distinction becomes irrational for this purpose. It is only when no act is performed by the taxpayer, no return of any kind made, that it becomes necessary to set up jurisdiction elsewhere." (R. 49-50)

A similar question of jurisdiction was involved in *Commissioner v. Roosevelt and Son Investment Fund* (89 Fed. (2d) 706). In that case the Circuit Court of Appeals for the Second Circuit held that it did not have jurisdiction. There is therefore direct conflict between the courts of the Second and Third Circuit on this question, and it is important that this question be settled.

In the *Roosevelt* case, as here, the taxpayer filed a fiduciary return on Form 1041. More than two years after the fiduciary return was filed but less than four years after the individual returns of the participants were filed, the Commissioner assessed a tax against the fund as a corporation. The Board of Tax Appeals (34 B. T. A. 38) held that the assessment was barred by Section 275 (a) of the Revenue Act of 1928, which is identical with section 275 (a) of the 1932 Act. The Commissioner appealed to the Circuit Court of Appeals for the Second Circuit on the same ground as here, viz., that the fiduciary return was not a return within the meaning of Section 275 (a). The Second Circuit Court stated that "return of the tax" meant the same thing in both the limitations sections and the venue section of the act and that if the Commissioner was right in his contention that the fiduciary return was a return within the meaning of Section 1002 (a), it was also a return within the meaning of Section 275 (a). The Court held that there

was no return under Section 1002 (a) and dismissed the appeal for want of jurisdiction.

This conflict between the two circuits should be resolved so that there may be no question as to jurisdiction of appeals from the Board of Tax Appeals in cases such as the present.

Petitioner submits that on the question of jurisdiction the Circuit Court of Appeals for the Third Circuit is correct and that a fiduciary return should be held to be a "return of the tax in respect of which the liability arises" within the meaning of Section 1002 (a) of the Revenue Act of 1926 as amended by Section 519 of the Act of 1934. We understand that Respondent concurs in this view.

CONCLUSION.

There is no question but that Petitioner in this case filed in good faith the return which it believed was proper, viz., a fiduciary return on Form 1041, that this return disclosed all of the information which would have been disclosed had it filed a return on Form 1120 and all the information which was necessary to enable Respondent to assess the proper tax against it.

To hold that this was a "return of the tax" which gave the lower court jurisdiction but not a "return" which started the two year period of limitations is to draw a distinction without a difference. The words have the same meaning in both sections. The fiduciary return was a return both for the purpose of giving the lower court jurisdiction under Section 1002 (a) and for the purpose of starting the two year period of limitations provided for in Section 275 (a).

It is therefore respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed and the judgment originally entered by the Board of Tax Appeals affirmed.

Respectfully submitted,

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APPENDIX.

STATUTES INVOLVED.

STATUTE OF LIMITATIONS.

Revenue Act of 1932, c. 209, 47 Stat. 169:

Section 1. APPLICATION OF TITLE.

The provisions of this title shall apply only to the taxable year 1932 and succeeding taxable years. Income, war-profits, and excess-profits taxes for taxable years preceding the taxable year 1932 shall not be affected by the provisions of this title, but shall remain subject to the applicable provisions of prior revenue Acts, except as such provisions are modified by Title IX of this Act or by legislation enacted subsequent to this Act.

Section 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax equal to the sum of the following:

(a) 4 per centum of the first $4,000 of the amount of the net income in excess of the credits against net income provided in Section 25; and

(b) 8 per centum of the remainder of such excess amount.

Section 12. SURTAX ON INDIVIDUALS—RATES OF SURTAX.

(a) There shall be levied, collected, and paid for each taxable year upon the net income of every individual a surtax . . .

Section 25. CREDITS OF INDIVIDUAL AGAINST NET INCOME.

There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

(a) Dividends.—The amount received as dividends—

(1) from a domestic corporation which is subject to taxation under this title. . .

Section 52. CORPORATION RETURNS.

(a) Requirement. Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice-president, or other principal officer and by the treasurer or assistant treasurer . . .

Section 142. FIDUCIARY RETURNS.

(a) Requirement of return.—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title—

(1) Every individual having a net income for the taxable year of $1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of $2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of $5,000 or over, regardless of the amount of his net income;

(4) Every estate or trust the net income of which for the taxable year is $1,000 or over;

(5) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income; and

(6) Every estate or trust of which any beneficiary is a non-resident alien.

Section 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) General rule.—The amount of income taxes imposed by this title shall be assessed within two years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

. . . . . .

(c) Corporation and shareholder.—If a corporation makes no return of the tax imposed by this title, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed.

Section 276. SAME—EXCEPTIONS.

(a) False return or no return.—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

Section 322. REFUNDS AND CREDITS.

(b) Limitation on allowance.

(1) Period of limitation.—No such credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) Limit on amount of credit or refund.—The amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund.

Section 1111. DEFINITION.

(a) When used in this Act . . .

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

Revenue Act of 1926, c. 27, 44 Stat. 58:

Section 277. (a) except as provided in Section 278.

(1) The amount of income taxes imposed by this Act shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(5) If a corporation makes no return of the tax imposed by this title, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. Nothing in section

283 shall be construed as making the provisions of this paragraph applicable to any tax imposed by a prior Act of Congress:

Section 278.

(a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. (Section 278 (a) of the Revenue Act of 1924, c. 234, 43 Stat. 299 is the same.)

Calendar No. 54 H. R. 1, 69th Congress, 1st Session, Report No. 52, In the Senate of the United States, An Act to reduce and equalize taxation, to provide revenue, and for other purposes.

Section 277. (a) Except as provided in section 278.

(1) The amount of income, excess-profits, and war-profits taxes imposed by the Revenue Act of 1921, and by such Act as amended, for the taxable year 1921 and succeeding taxable years, and the amount of income taxes imposed by the Revenue Act of 1924, and by this Act, shall be assessed within four years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

. . . . . .

(4) If a corporation makes no return of the tax imposed by this title, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. Nothing in section 283 shall be construed as making the provisions of this paragraph applicable to any tax imposed by a prior Act of Congress.

Regulations 77: Article 391.

Corporation returns.—Every corporation not expressly exempt from tax must make a return of income, regardless of the amount of its net income. In the case of ordinary corporations, the return shall be on Form 1120. . . .

Article 741.

Fiduciary returns.—Every fiduciary, or at least one of joint fiduciaries, must make a return of income—

. . . . . .

(b) For the estate or trust for which he acts if the net income of such estate or trust is $1,000 or over, or if the gross income of the estate or trust is $5,000 or over, regardless of the amount of the net income, or if any beneficiary of such estate or trust is a non-resident alien.

The return in case (a) shall be on Form 1040 or 1040 A. In case (b) a return is required on Form 1040 with respect to any taxable net income of the estate or trust computed in accordance with section 162 and a return on Form 1041 with respect to any income deducted under section 162 (b) or (c). If a portion of the income of the estate or trust is retained by the fiduciary and the remainder is distributable or distributed to beneficiaries, both Forms 1040 and 1041 will be required. (See article 862.) . . .

VENUE

Revenue Act of 1934, c. 277, 48 Stat. 760:

Sec. 519. Venue for Appeals From Board of Tax Appeals.

(a) Section 1002 of the Revenue Act of 1926 is amended to read as follows:

"Sec. 1002. (a) Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of

Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia.

"(b) Notwithstanding the provisions of subsection (a), such decision may be reviewed by any Circuit Court of Appeals or the Court of Appeals of the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing."

(c) Section 1002 of the Revenue Act of 1926, as amended by this section, shall be applicable to all decisions of the Board rendered on or after the date of the enactment of this Act, and such section, as in force prior to its amendment by this section, shall be applicable to such decisions rendered prior thereto, except that subdivision (b) thereof may be applied to any such decision rendered prior thereto (U. S. C., Title 26, Sec. 641).